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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,474	09/23/2003	Heinz Hermann Wippersteg	2725	2948

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STRIKER, STRIKER & STENBY
103 East Neck Road
Huntington, NY 11743

EXAMINER

BENGZON, GREG C

ART UNIT	PAPER NUMBER
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2444

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/668,474	WIPPERSTEG, HEINZ HERMANN	
	Examiner	Art Unit	
	GREG BENZON	2444	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 40-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This application has been examined. Claims 40-51 are pending. Claims 1-39 are cancelled. Claims 40-51 are submitted as new claims.

Making Final

Applicant's arguments filed 11/23/2009 have been fully considered but they are not persuasive.

The new claims do not overcome the disclosure by the prior art as shown below.

The Examiner is maintaining the rejection(s) using the same grounds for rejection and thus making this action FINAL.

Priority

This application claims benefits of priority from Foreign Application 10245169.9 (GERMANY) filed September 26, 2002.

The effective date of the claims described in this application is September 26, 2002.

Response to Arguments

Applicant's arguments filed 11/23/2009 have been fully considered but they are moot in view of the new grounds for rejection.

Frees disclosed (re. Claim 40) wherein the service offered by the provider to answer a question posed by the receiver includes obtaining information that the receiver has not expressly requested, but that increases a quality of the service offered to the receiver by the provider. (Frees-Column 25 Lines 45-55, *'facilitator , without receiving any request from a collaborating team member, examiners answers from team members and decides that there is a common shared vision between the team member'*)

The Examiner notes that the identification of the shared vision increases the quality of the collaboration between the team members because the shared vision accelerates consensus-building and action planning between collaborators.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

Claim 40 recites a limitation for ' *wherein groups of the providers advertise their services to one another and make them available in a retrievable manner*'.

The claim or claims must conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support

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or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 40-51 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 40-51 are directed towards '*a system based on electronic data exchange comprising of users*'.

The Examiner notes that the preamble of the claims indicate the presence of a data network which the Examiner interprets as a data transmission network with data memory described in Applicant Specification Page 10 Lines 5-10. The Examiner notes however there is no indication of said computer performing any of the claim limitations and thus the Examiner does not detect any requirement in the claims for said 'data network' and 'data exchange' to be implemented by a computer. The '*users*' are thus open to being interpreted as human operator.

The Examiner concludes that since there is no indication of a computer device in the claim language the claims may be interpreted as performed without an apparatus or a machine.

Since there is no association between the system and any hardware or physical device the claims may be interpreted as not tied to manipulating a computer device. Thus the claims are non-statutory for failing to comply with the Diehr test for process patents, which requires the process to either transform matter into a different state or thing, or be tied to a particular apparatus or machine.

The Examiner interprets the steps '*transmitting information*' and '*receiving information*' as insignificant pre-solution and/or post-solution activities in the context of the claimed invention because the Applicant Specifications do not describe any novelty in these steps. Thus the '*transmitting information*' and '*receiving information*' steps do not provide the necessary transformation by and association with an apparatus or machine.

The Examiner further notes that said data network may be embodied as a wireless transmission signal. The Examiner notes that said carrier wave or data signals embodied in a carrier wave are non-statutory subject matter. The Examiner notes that absent some physical context, a signal per se is an abstract idea in much the same way that a mathematical algorithm without context is an abstract idea.

Thus where a data network is a network of data signals the claimed system cannot be interpreted as pertaining to statutory subject matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 40-42,44,47-49,51 rejected under 35 U.S.C. 102(e) as being anticipated by Frees (US Patent 6769013).

Frees disclosed (re. Claim 40) a system based on electronic data exchange, comprising a plurality of users exchanging data via at least one data exchange system and including providers and receivers of information, (Frees-Figure 16, Figure 17,Column 2 Lines 25-35)

wherein a user or a group of users of at least one data transmission network generate as providers required information according to specific standards, (Frees-Column 15 Lines 15-20, *'user enter standard process information'*, Column 18 Lines 1-5) said required information that is generated according to the specific standards (Frees-Column 15 Lines 15-20, *'user enter standard process information'*, Column 18 Lines 1-5,*HTML and other protocols*) is retrievable and/or editable by the users functioning as the receivers of the at least one data transmission network in a manner that is adjusted to the need of the particular user, (Frees-Column 16 Lines

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25, *participants may add and reply*, Column 24 Lines 15-20, *other team members are able to reply*)

wherein one or more of the providers offer the needed information in a form of services to a large number of the receivers (Frees-Column 5 Lines 35-45, *'collaboration between employees of companies and organizations'*) with the needed information having been adjusted to the needs of the particular receiver, (Frees-Column 16 Lines 60, *'action items are added to the action register for specific participants'*)

wherein groups of the providers advertise their services to one another and make them available in a retrievable manner, (Frees-Figure 27, Column 18 Lines 50-55, *user is able to select the other teams/participants for collaboration'*)

wherein the needed information which is made available from the providers in the form of services is offered to a particular receiver and/or a group of the receivers in a timely manner (Frees-Column 24, Lines 45-55, *'deadline for submitting information'*) and such that a content is adjusted to information needs of the particular receiver. (Frees-Column 16 Lines 60, *'action items are added to the action register for specific participants'*)

Frees disclosed (re. Claim 40) wherein the service offered by the provider to answer a question posed by the receiver includes obtaining information that the receiver has not expressly requested, but that increases a quality of the service offered to the receiver by the provider. (Frees-Column 25 Lines 45-55, *'facilitator , without receiving*

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any request from a collaborating team member, examiners answers from team members and decides that there is a common shared vision between the team member")

The Examiner notes that the identification of the shared vision increases the quality of the collaboration between the team members because the shared vision accelerates consensus-building and action planning between collaborators.

Frees disclosed (re. Claim 41) wherein the provider or the providers define access rights to the services that are offered. (Frees-Column 11 Lines 25-30)

Frees disclosed (re. Claim 42) wherein the receiver or the receivers generate questions which are transmitted to at least one of the providers of services via the at least one data exchange system, and the service of the at least one provider includes answering the generated questions. (Frees-Figure 1B, Column 6 Lines 10-15, Column 12 Lines 65)

Frees disclosed (re. Claim 44) wherein the service or the services offered by the at least one provider are made available to the at least one receiver on a permanent basis or on as need requires basis. (Frees-Column 5 Lines 10-15)

Frees disclosed (re. Claim 47) wherein the receiver or receivers, or the provider or providers of the services is/are stationary or (Frees-Column 1 Lines 40, *users can*

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take part in discussion without travel') mobile units which communicate with one another and/or with one or more receivers or providers of services via one or more data exchange systems.

Frees disclosed (re. Claim 48) wherein one or more providers and one or more receivers exchange information with one another via one or more data exchange systems. (Frees-Figure 1B, Column 6 Lines 10-15, Column 12 Lines 65)

Frees disclosed (re. Claim 49) wherein one or more data exchange systems are global and/or locally limited data exchange systems. (Frees-Column 5 Lines 40-50, Column 12 Lines 55-60)

Frees disclosed (re. Claim 51) wherein the information generated by the users in the data transmission networks is generated in standardized formats. (Frees-Column 15 Lines 15-20, '*user enter standard process information*', Column 18 Lines 1-5, *HTML and other protocols*)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43,45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frees (US Patent 6769013) further in view of Schneider (US 6990459).

While Frees substantially disclosed the claimed invention Frees did not disclose (re. Claim 43) wherein the service of the provider or the providers includes incorporating one or more services provided by other providers and/or sub-service providers.

Schneider disclosed engaging third-party professionals and regionally specific knowledge databases to provide optimal crop planning.

Schneider disclosed (re. Claim 43) wherein the service of the provider or the providers includes incorporating one or more services provided by other providers and/or sub-service providers.(Schneider-Column 8 Lines 40-45, *acquiring from a third party industry professional or source, data or information pertaining to one or more of the following: seed prices, fertilizer prices, production contracts, agriculture insurance rates, agriculture marketing information, agriculture consultants' information, agriculture accounting information and agriculture lenders' rates*).

Frees and Schneider are analogous art because they present concepts and practices regarding collaboration and knowledge exchanges regarding agricultural and food business entities. At the time of the invention it would have been obvious to a person of ordinary skill in the networking art to combine Schneider into Frees . The motivation for said combination would have been to enable an optimized farm management plan. (Schneider-Column 3 Lines 45-55)

Frees-Schneider disclosed (re. Claim 45) wherein the provider of the service obtains the information that the receiver has not expressly requested by engaging the services of other providers. (Frees-Column 25 Lines 45-55, *'facilitator , without receiving any request from a team member, examiners answers from team members and decides that there is a common shared vision between the team member'*)

The Examiner notes that it would have been obvious for the Frees facilitator to consider the input from the external professionals disclosed by Schneider.

Frees-Schneider disclosed (re. Claim 46) wherein the services of a plurality of providers are offered to the at least one receiver and/or a selection of services or all of the services are offered by various providers to the at least one receiver. (Schneider-Column 11 Lines 35-45, *'user is able to select options for inclusion in scenario'*)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said

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subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 50 rejected under 35 U.S.C. 103(a) as being unpatentable over Frees (US Patent 6769013) further in view of Schneider (US 6990459) further in view of Curkendall (US Patent 6995675).

While Frees-Schneider substantially disclosed the claimed invention, Frees-Schneider did not disclose (re. Claim 50) wherein said stationary unit or said mobile unit have sensors for generating receiver-specific information, and said receiver-specific information is made available to at least one service provider and/or at least one further receiver by means of said at least one data exchange system.

Curkendall disclosed (re. Claim 50) wherein said stationary unit or said mobile unit have sensors for generating receiver-specific information, (Curkendall-Column 21 Lines 15-25) and said receiver-specific information is made available to at least one service provider and/or at least one further receiver by means of said at least one data exchange system. (Curkendall-Column 21 Lines 55-60)

Frees,Schneider and Curkendall are analogous art because they present concepts and practices regarding collaboration and knowledge exchanges. At the time of the invention it would have been obvious to a person of ordinary skill in the networking art to combine Curkendall into Frees-Schneider. The motivation for said combination would have been to provide data collection in a seamless manner. (Curkendall-Column 5 Lines 55-60)

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Bengzon whose telephone number is (571) 272-3944. The examiner can normally be reached on Mon. thru Fri. 8 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on (571)272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. B./
Examiner, Art Unit 2444
/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2444